

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA

GLENNA K. PIERCE,
Plaintiff,

vs.

JO ANNE B. BARNHART,
COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

No. CIV-05-158-W

FILED
AUG 15 2005
ROBERT D. DENNIS, CLERK
U.S. DIST. COURT, WESTERN DIST. OF OKLA.
BY BS DEPUTY

ORDER

On June 15, 2005, United States Magistrate Judge Valerie K. Couch directed plaintiff Glenna K. Pierce to show that she had served the defendant, Jo Anne B. Barnhart, Commissioner of the Social Security Administration ("Commissioner"), or to demonstrate that good cause existed for her failure to obtain service in accordance with Rule 4(m), F.R.Civ.P. Pierce was advised of the consequences of her failure to comply, but she did not respond to Magistrate Judge Couch's Order¹ within the time allotted.

On July 22, 2005, Magistrate Judge Couch issued a Report and Recommendation and recommended that the Court dismiss this action without prejudice to refile due to Pierce's failure to serve the Commissioner within the time limits prescribed by Rule 4(m), supra. Pierce was advised of her right to object to the Report and Recommendation, but again she did not respond.


¹Pierce is represented by counsel. Court records indicate that counsel has been the subject of at least three other similar Orders. See Robertson v. Barnhart, No. CIV-05-277-W (Order issued June 23, 2005); Wise v. Barnhart, No. CIV-05-236-F (Order issued June 30, 2005); McCormick v. Barnhart, No. CIV-04-1521-M (Order issued June 23, 2005)

Upon de novo review of the record, the Court concurs with Magistrate Judge Couch's suggested disposition of this matter. More than 120 days have elapsed since the filing of the complaint. Because there is no proof in the record that service was obtained within that period of time, the complaint is subject to dismissal. Rule 4(m), supra. Pierce has failed to show cause why service has not been perfected and the Court, in its discretion, finds no factors exist which require a permissive extension of time to effect service.

Accordingly, the Court

- (1) ADOPTS the Report and Recommendation issued on July 22, 2005; and
- (2) DISMISSES this matter without prejudice to refiling.

ENTERED this 15th day of August, 2005.



LEE R. WEST
UNITED STATES DISTRICT JUDGE